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**MAY 23 2006**

Assistant Secretary  
DOH Environmental Health Programs

**DOE #:** \_\_\_\_\_  
**DOH #: N10804**

**MEMORANDUM OF UNDERSTANDING**

Between the

**Washington State Department of Health (WDOH)**

and the

**Washington State Department of Ecology (WDOE)**

Related to the

**MANAGEMENT AND IMPLEMENTATION OF THE  
WASHINGTON STATE LABORATORY CERTIFICATION  
PROGRAM FOR REGULATORY DRINKING WATER ANALYSES**

WHEREAS the Washington State Department of Health ("WDOH") has established a drinking water laboratory certification program through which it certifies laboratories as authorized to test drinking water compliance samples and as capable of producing accurate analytical data.

WHEREAS the Washington State Department of Ecology ("WDOE") has established an environmental laboratories accreditation (a.k.a. certification) program through which it accredits (certifies) laboratories as authorized to test environmental water quality compliance samples and as capable of producing accurate analytical data.

WHEREAS the United States Environmental Protection Agency ("EPA") has approved the Washington State drinking water program and WDOH maintains primary responsibility for the implementation and enforcement of federal Safe Drinking Water Act requirements in Washington State.

WHEREAS a state with such primary enforcement responsibility must maintain a state program for certification of laboratories conducting analytical measurements of drinking water contaminants including the designation by the state primacy agency of a person certified by EPA as the official (State Certifying Authority) responsible for the state's certification program.

WHEREAS many of the same or similar analytical methods are used for both water quality analyses associated with environmental samples and drinking water samples.

WHEREAS both WDOH and WDOE maintain a high commitment to the administration of a quality laboratory certification program to assure the highest level of confidence in analytical results.

WHEREAS the WDOE has statutory authority to certify laboratories as authorized to test drinking water compliance samples and as capable of producing accurate analytical data.

WHEREAS combining the drinking water and environmental laboratory certification programs will streamline the functions performed by the agencies in terms of efficiencies and economy.

NOW, THEREFORE, it is agreed:

**I. AUTHORITY**

This Memorandum of Understanding (MOU) is made and entered into by and between the Washington Department of Health (WDOH) and the Washington Department of Ecology (WDOE) pursuant to the authorities granted them by statute including chapters 70.119A, 43.70, 43.20, and 43.21A RCW.

More specifically, under RCW 70.119A.080(2) and 43.21A.445, WDOH and WDOE are authorized to enter into an agreement with each other to administer federal Safe Drinking Water Act requirements.

**II. PURPOSE AND SCOPE**

The purpose of this MOU is to establish a working agreement that identifies the roles and responsibilities of WDOH and WDOE in implementing and administering a drinking water laboratory certification program. This MOU is not considered to be a binding contract between the parties and may be adjusted periodically through processes identified within the MOU.

**III. ROLES AND RESPONSIBILITIES**

**Department of Health (WDOH)**

WDOH will, through the Division of Drinking Water, maintain ultimate responsibility for the drinking water laboratory certification program consistent with federal Safe Drinking Water Act requirements.

WDOH will designate and maintain the state certification authority position. The state certification authority will conduct an annual review of the drinking water laboratory certification program administered by WDOE for consistency with Safe Drinking Water Act requirements.

WDOH will designate an individual, having a background in microbiological and chemistry principles and analytical techniques and who is well versed in the requirements of the state's drinking water program and its associated laboratory certification requirements, as a contact person to coordinate activities associated with drinking water program responsibilities pursuant to the primacy agreement with EPA.

WDOH will participate in any reviews, audits, or evaluations of the WDOE drinking water laboratory certification program initiated by EPA or by WDOE.

WDOH will work with WDOE in the preparation of a biennial operations plan for the administration and conduct of laboratory certification services for those laboratories involved with drinking water contaminant analyses.

#### **Department of Ecology (WDOE)**

WDOE will be responsible for all administration elements for drinking water laboratory certification actions including certifications, renewal of certifications, and de-certifications.

WDOE will provide laboratory certification services upon request for all public, private, and utility-owned laboratories for those analytes identified as primary or secondary drinking water contaminants as promulgated by the EPA and adopted in rule by the State Board of Health. The provision of laboratory certification services will be consistent with guidelines established by EPA and described in the EPA "Manual for the Certification of Laboratories Analyzing Drinking Water." WDOE will complete amendment of chapter 173-50 WAC to clearly address certification of laboratories for drinking water analyses, and all drinking water laboratory certifications will comply with Chapter 173-50 WAC.

WDOE will participate in annual reviews of the drinking water laboratory certification program to assure consistency with Safe Drinking Water Act requirements.

WDOE will participate in any federal reviews or audits (generally on an annual basis) of the drinking water program where drinking water laboratory certification is, or is likely to be, an element of review or audit.

By August 31, 2002, WDOE, in concert with WDOH, will finalize a biennial operations plan for the provision of drinking water laboratory certification services, effective from the time that WDOE completes revision of appropriate regulations (WAC 173-50) that includes drinking water laboratory requirements through June 30, 2003. The operations plan will thereafter be updated annually during the final quarter of state fiscal year.

#### **A. Certification Activities**

All WDOE auditors and their managers are expected to be responsive to Drinking Water Program requirements regarding the laboratory certification aspects of the program. Drinking Water Program requirements associated with laboratory certification-related issues (such as laboratory reporting procedures and protocols, routine listings of certified laboratories, etc.) will be discussed between WDOH and WDOE prior to the effective date for transfer of the program, and will be updated as needed thereafter. Direct lines of communication will be established between a WDOH laboratory certification coordinator from the Drinking Water

Program, the WDOH State Certifying Authority (Assistant Secretary for Environmental Health Programs), and the WDOE laboratory certification program supervisor.

**B. Enforcement**

WDOE will determine if a laboratory is in non-compliance with the certification requirements and inform WDOH of this finding. All laboratory certification-related actions (i.e., certifications, decertifications, provisional certifications, etc.) taken upon a laboratory shall be the responsibility of WDOE. WDOE will notify WDOH concurrently with the laboratory whenever WDOE takes action against a laboratory that has failed to maintain appropriate capability to perform one or more analytical methods. Electronic "notice of decertification" decisions will be provided by WDOE to WDOH immediately upon effect. A copy of any written notice, or order, decertifying the laboratory will be provided by WDOE to the WDOH certification authority within ten working days.

WDOH will upon receipt of notice, including the date that a laboratory is, or will be, no longer certified to perform certain analytical methods on drinking water samples, disallow entry of data for those methods from that laboratory into its compliance data system.

WDOE will coordinate and participate with WDOH in resolving issues, such as proper data reporting or data entry, that impact the accuracy and efficiency of the drinking water regulatory program.

**C. Certification Authority**

While WDOE will have responsibility for all routine certification program decisions (i.e., granting, renewing, revoking laboratory certifications), the WDOH certification authority will maintain ultimate oversight over the drinking water laboratory certification program. If the WDOH certification authority determines that the WDOE certification program is inconsistent with primacy requirements, the certification authority will notify WDOE in writing. If WDOE does not remedy the deficiency, or implement an approach to remedy the deficiency, within 10 days of receipt of notice, WDOH will inform EPA of the deficiency and initiate a follow-up conference with WDOE and EPA management to discuss and address the deficiency, consistent with the Dispute Resolution process described herein.

**D. Listings of Currently Certified Laboratories**

WDOE will maintain a listing of all labs certified to perform regulatory drinking water analyses and the methods/analytes for which they can perform certified analyses. This listing will be updated monthly, at a minimum, and provided electronically to WDOH.

WDOH will insure the current lab listing is copied and distributed appropriately to requestors, and/or placed on the Internet.

**E. Funding**

WDOE will be responsible, through fee establishment or other means consistent with the state's budgetary process, to secure sufficient funding to maintain the laboratory certification program for drinking water program-related analyses. Funding allocations should be sufficient to accommodate all laboratory certification-related costs for program management, administration, and implementation, including costs associated with the EPA-required, routine proficiency training of auditors. WDOE, if unable to fully meet the revenue requirements to support the program in any given biennium, will take appropriate action to ensure that adjustments are made to the WDOE budget to account for projected program funding expectations in subsequent biennia. WDOH will assist WDOE on proposals for legislative action undertaken to adjust the program's budget. If the budget cannot be adjusted to accommodate the program funding levels needed to satisfactorily meet federal-state primacy requirements, the parties will determine the available and reasonable options, and implement the appropriate actions to address the fiscal needs of the program.

Unless otherwise specified within the MOU, any and all expenses incurred by either party acting under the stipulations of this MOU shall be the sole responsibility of that party.

**F. Qualifications of Auditors**

WDOE will assure that auditors responsible for drinking water laboratory certifications have the appropriate qualifications upon initial hiring, and that they engage in on-going demonstrations of proficiency to maintain basic qualification criteria. The qualification requirements for drinking water program laboratory certification auditors are:

For initially hired auditors:

- (1) Successful completion of the EPA laboratory certification course that is offered in Cincinnati, Ohio.
- (2) Attainment of a Bachelor's Degree, or equivalent, in a discipline related directly to the functions associated with the auditing of a laboratory's capability to perform consistent, accurate analyses for methods approved for drinking water testing.
- (3) Documented evidence of having been employed in the conduct of bench scale laboratory testing, using similar methods and techniques for which auditing services would be provided, within the past five years. This experience requirement would necessitate evaluation of the nature of the bench work as

well as the amount of time (full time, part time, etc.) spent in performing various analytical methods.

For maintenance of existing auditor credentials:

- (1) Maintain proficiency by periodically performing bench analyses for those analytes for which the auditor will be accrediting laboratories. This applies to all major methods used for drinking water analyses for which laboratory certification is offered.
  - For Microbiology this involves approximately three to four days of performance each quarter for each of the methodologies - MF, MTF, and chromogenic-fluorogenic analyses for total coliform and fecal coliform/*E. coli* analyses, and "pour plate" methods for heterotroph analysis. The incorporation of new regulatory methods may require an associated additional performance demonstration as new federal requirements are developed in the future.
  - For Chemistry this involves performance using the various major drinking water methodologies (GC w/ various detectors, GC/Mass spectroscopy, HPLC for organics; AA flame, AA furnace, ICP, ICP/MS, Ion Chromatography, and Automated Colorimetry for trace metals and other inorganics). The auditor is required to spend a minimum of two weeks per year in bench performance and is expected to demonstrate proficiency for each of the relevant major methodologies for drinking water analyses within each three-year certification cycle.
- (2) Participate in the EPA Drinking Water Laboratory Certification training course (mentioned above) every five years for gaining proficiency with new methods and updating of proficiency for existing methods and regulations.

*NOTE: Maintenance of proficiency through bench analyses may be accomplished using methods and equipment associated with environmental analyses (CWA, RCRA, CERCLA with SW-846 or 600 series Methods) that would be analogous to drinking water methods. This would only be in the event that opportunity for bench work with drinking water methods is not reasonably available.*

*If an auditor does not have the necessary understanding and proficiency for any methods for which a laboratory is requesting certification, the auditor shall arrange to have a qualified analyst accompany him/her during an on-site audit involving the method(s) in question.*

**G. Provision of EPA Sanctioned Laboratory Support Services (primacy reference laboratory)**

The WDOH and the WDOE will cooperatively determine the most appropriate means for securing services of an in-state laboratory (or laboratories) for provision of laboratory certification-related auditor training or proficiency maintenance opportunities. WDOH will work with EPA to assure that certification of the providing lab is consistent with EPA requirements and guidelines, and that the lab will be reasonably accessed for necessary auditor training/proficiency maintenance.

**H. Use of Other Laboratories**

If, after making all reasonable effort, the state cannot fulfill its auditing responsibilities for certain analytical methods, WDOH will request that the EPA Regional Certification Authority provide direct certification services for those laboratories capable of performing those certain analyses (such as for testing dioxin, asbestos, glyphosate, etc.). Such requests are expected only rarely, and only if there would be a significant cost incurred to institute such services through the state program. For analyses that are rarely demanded and for which no in-state laboratory capability exists, the use of out-of-state laboratories that have been certified by another state or EPA shall be used to meet regulatory requirements.

**I. Biennial Report**

During the last six months of each fiscal biennium WDOH will, in conjunction with WDOE, assess the laboratory certification program during the previous biennium and provide a summary report of the program's performance for managerial and EPA review. Issues identified in the report will form the basis for any adjustments to the program and related budget for the ensuing biennium. This assessment may be in addition to review conducted under subsection C of this MOU.

As periodically determined to be appropriate, except as provided in subsection C of this MOU, WDOE management and auditors will meet with WDOH management and coordination staff to assess the on-going implementation of the drinking water laboratory certification program and to develop approaches for emerging drinking water program requirements that will be, or have been, promulgated by either the EPA or the state. Any adjustments to the MOU will also be addressed as needed to accommodate the program requirements of either agency.

**IV. INDEPENDENT CAPACITY**

The employees of each party engaged in the performance of their responsibilities under this MOU shall continue to be employees, or agents, of that party and shall not be considered for any purpose to be employees, or agents, of the other party.

**V. DISPUTE RESOLUTION**

The WDOH State Certifying Authority, or his/her designee, the designated drinking water program certification coordinator, and the WDOE drinking water audit supervisor will report any issues, concerns, or problems that arise, or are believed to be imminent, regarding the implementation of this MOU to each other upon discovery. When a bona fide dispute arises between the parties to this MOU concerning its implementation, the parties agree to work together in good faith to resolve the dispute. Staff will meet to resolve the concern as soon as it is both practical and appropriate to do so. The parties shall use their best efforts to resolve the dispute informally at the staff level. If those efforts fail, either party may request the convening of a Dispute Board to resolve the disputed concern or issue. The Dispute Board shall consist of one member appointed by each of the MOU agencies, plus an additional member selected by the appointed members. The Dispute Board shall within 30 days initiate a review of the facts, MOU terms, and applicable statutes and rules and make a determination for the appropriate disposition for the dispute. If the dispute cannot be reconciled through this process, the MOU will be terminated within six months of the official notice by either party that the dispute is not reconcilable.

**VI. INDEMNIFICATION**

Each party to this understanding shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this understanding shall be responsible for the acts and/or omissions of entities or individuals not a party to this understanding.

**VII. AMENDMENTS**

This memorandum is intended to be a functional document to describe the roles and responsibilities of each agency. It shall be kept current and amended as needed.

**VIII. TERMINATION OF MOU**

This MOU may be terminated by either agency with six months notice, except that neither agency shall seek termination in the event of a dispute without first implementing and completing the dispute resolution process.



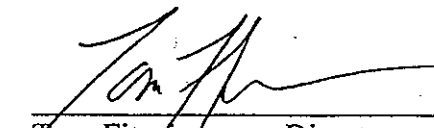
**IX. EFFECTIVE DATE**

This MOU shall take effect on the date of the last signature below and shall remain in effect unless terminated as provided herein. The parties to this MOU agree to an annual review of the elements of this MOU. Any significant adjustment(s) resulting from the annual review shall be incorporated as amendment(s) to the MOU signed by both parties.

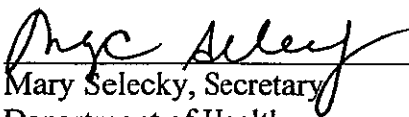
**X. ALL WRITINGS CONTAINED HEREIN**

This MOU contains all terms, responsibilities, and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the contents of this MOU shall be deemed to exist or to bind any of the parties thereto.

**SIGNATURES:**

  
\_\_\_\_\_  
Tom Fitzsimmons, Director  
Department of Ecology

4-4-02  
\_\_\_\_\_  
(date)

  
\_\_\_\_\_  
Mary Selecky, Secretary  
Department of Health

4/4/02  
\_\_\_\_\_  
(date)

Approved as to Form:

\_\_\_\_\_  
John Whited, Assistant Attorney General, Ecology

\_\_\_\_\_  
(date)

On File  
\_\_\_\_\_  
Joyce Roper, Assistant Attorney General, Health

03/29/02  
\_\_\_\_\_  
(date)

